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Date: 3/23/2018 6:45:08 PM
Subject: [TBA Today] 03-23-2018

TBA Today

Tennessee Bar Association

Friday, March 23, 2018 [Search the TBA Site for Opinions and News Items](#)

Tennessee High School Mock Trial Competition Underway

The state tournament for Tennessee high school mock trial teams is underway now in Nashville. Fourteen teams from across the state are competing in this year's tournament presented by the TBA's Young Lawyers Division and supported by hundreds of Tennessee lawyers and judges. The qualifying teams this year are Unicoi High School of Erwin, Farragut High School of Knoxville, Jefferson County High School of Dandridge, Chattanooga Southeast Tennessee Home Education Association of Chattanooga, Signal Mountain High School of Signal Mountain, Jackson Homeschool of Jackson, Beech High School of Hendersonville, Montgomery Bell Academy of Nashville, Harpeth Hall of Nashville, Springfield High School of Springfield, Agathos Classical School of Columbia, Franklin High School of Franklin, Memphis University School of Memphis, and St. Mary's Episcopal School, also of Memphis. Tomorrow evening after the main four rounds are completed, two teams will advance to the championship round and a winner will be crowned.

Today's Opinions

Click on the category of your choice to view summaries of today's opinions from that court, or other body. A link at the end of each case summary will let you download the full opinion in PDF format.

- 00 - TN Supreme Court
- 00 - TN Workers Comp Appeals
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- 00 - Formal Ethics Opinions - BPR
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- 01 - [6th Circuit Court \(Published Opinions\)](#)

You can obtain full-text versions of these opinions by selecting the link below each opinion's summary paragraph. Your email software should give you the option of reading the opinion online or downloading it to your computer or mobile device. Decisions from the 6th Circuit Court that are not designated for publication are not included in this report.

TN Court of Appeals

JACINTO MACHIC V. CHRISSY M. MACHIC

Court: TN Court of Appeals

Attorneys:

Paige Coleman, Knoxville, Tennessee, for the appellant, Chrissy M. Machic.

Kevin R. Bryant, Crossville, Tennessee, for the appellee, Jacinto Machic.

Judge(s): CLEMENT

This appeal arises from a final decree of divorce. Mother appeals, contending the

Today's News

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- [TBA in the News](#)
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Tennessee Supreme Court

Tennessee Supreme Court to Hear Controversial DUI Case

The Tennessee Supreme Court has agreed to hear a controversial case that is throwing drunk-driving prosecutions into disarray, [the Times Free Press reports](#). Last month, the Criminal Court of Appeals said the Tennessee Bureau of Investigation was overseeing an "unconstitutional" fee system that made defendants pay a \$250 blood test fee if they were convicted. Arguments will take place May 31 in Nashville.

Justice Clark Gives Keynote Speech for Andrew Jackson's 251st Birthday

The Tennessee Supreme Court's Justice Cornelia Clark [served as keynote speaker](#) in this year's wreath-laying ceremony at The Hermitage to celebrate the birthday of Andrew Jackson. Justice Clark gave a short speech highlighting little-known facts about Andrew Jackson's early days as an attorney, prosecutor, and member of the Tennessee Supreme Court, noting that "Though his later career is what most people remember about him, Jackson's early years as a Tennessee lawyer and member of the Tennessee Supreme Court are critical to understanding both his own national advancement and the development of our state's early judiciary."

Legal News

Corn Named Brentwood City

trial court erred in designating Father as the Primary Residential Parent and awarding the majority of parenting time to Father; she also challenges the division of the marital property. Because the trial court made no findings of fact and the statement of the evidence is inadequate, we have determined that we cannot conduct an appropriate appellate review of the issues raised. Accordingly, the judgment of the trial court is vacated and this matter is remanded for the trial court to, inter alia, comply with the mandate in Tenn. R. Civ. P. 52.01, which states that “the [trial] court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.”

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TN Court of Criminal Appeals

STEVEN O. HUGHES-MABRY v. RANDY LEE, WARDEN and STATE OF TENNESSEE

Court: TN Court of Criminal Appeals

Attorneys:

Steven O. Hughes-Mabry, Mountain City, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; M. Todd Ridley, Assistant Attorney General; and Barry P. Staubus, District Attorney General, for the appellee, State of Tennessee.

Judge(s): THOMAS

The Petitioner, appeals from the Sullivan County Criminal Court’s summary dismissal of his petition for a writ of error coram nobis. The Petitioner contends that the coram nobis court erred by summarily dismissing his petition as having been untimely filed and for failing to state a cognizable claim for relief. Following our review, we agree with the coram nobis court that the Petitioner is attempting to relitigate the denial of his pretrial suppression motion. Accordingly, we affirm the judgment of the coram nobis court.

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STATE OF TENNESSEE v. THOMAS LOUIS MOORE

Court: TN Court of Criminal Appeals

Attorneys:

Richard Hughes, District Public Defender; and Paul O. Moyle IV, Assistant District Public Defender, for the appellant, Thomas Louis Moore.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; Stephen D. Crump, District Attorney General; and Andrew Watts, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge(s): THOMAS

The Defendant, Thomas Louis Moore, appeals as of right from the Bradley County Criminal Court’s revocation of his probation and order of incarceration for the remainder of his ten-year sentence. The Defendant contends that the trial court abused its discretion in ordering execution of his sentence. Following our review, we affirm the judgments of the trial court.

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6th Circuit Court (Published Opinions)

JOHN R. TURNER v. UNITED STATES OF AMERICA

Court: 6th Circuit Court (Published Opinions)

Court Appealed From: Appeal from the United States District Court for the Western District of Tennessee at Memphis.

Attorney

Kristen Corn has been named attorney for the City of Brentwood, [The Tennessean reports](#). Corn replaces Roger Horner, who recently retired. She comes to Brentwood from the City of Franklin, where she served as assistant city attorney.

Former Hamilton County Magistrate Says She Was Fired for Being Gay

A former Hamilton County magistrate at Juvenile Court says she was fired because she is openly gay, [Chattanooga.com reports](#). Elizabeth Gentzler is suing Hamilton County, Judge Rob Philyaw and Court Administrator Sam Mairs for her termination. Gentzler said Wednesday that gay marriage “is nothing you put in air quotes,” after County Attorney Rheubin Taylor allegedly used his hands to form quote marks when describing Gentzler’s marriage to another woman.

National First-Time Bar Passage Rate Up 3 Percent for 2017

The most recent class of law school graduates have improved upon first-time bar passages from the year prior, [the ABA Journal reports](#). The class of 2017’s bar passage rate was 77.2 percent, an increase from 74.3 in 2016. The data comes from a new report, released Thursday, by the ABA Section of Legal Education and Admissions to the Bar.

Wrongful Death Lawsuit Filed Against Shelby County Sheriff’s Office

Attorneys for a 59-year-old woman have filed a wrongful death lawsuit against the Shelby County Sheriff’s Office after she was shot by deputies last year, [The Commercial Appeal reports](#). The lawsuit, filed last week, claims Nancy Jane Lewellyn was in a mental health crisis when she was fatally shot while holding a BB gun in her driveway. She had called 911 and made threats to kill herself or the next person she saw, according to records.

TBA in the News

Diversity Leadership Institute Kicks Off First Meeting

After their first meeting in January was cancelled due to inclement weather, Diversity Leadership Institute class members met for the

Attorneys:

ARGUED EN BANC: Robert L. Hutton, GLANKLER BROWN, PLLC, Memphis, Tennessee, for Appellant. Kevin G. Ritz, UNITED STATES ATTORNEY'S OFFICE, Memphis, Tennessee, for Appellee.

ON SUPPLEMENTAL BRIEF: Robert L. Hutton, GLANKLER BROWN, PLLC, Memphis, Tennessee, for Appellant. Kevin G. Ritz, Murrell G. Martindale, UNITED STATES ATTORNEY'S OFFICE, Memphis, Tennessee, for Appellee. Steven J. Mulroy, UNIVERSITY OF MEMPHIS, Memphis, Tennessee, Stephen Ross Johnson, RITCHIE, DILLARD, DAVIES & JOHNSON, P.C., Knoxville, Tennessee, Adam Lamparello, Newport, Kentucky, for Amici Curiae.

Judge(s): COLE, Chief Judge; BATCHELDER, MOORE, CLAY, GIBBONS, ROGERS, SUTTON, COOK, McKEAGUE, GRIFFIN, KETHLEDGE, WHITE, STRANCH, DONALD, THAPAR, and BUSH, Circuit Judges.

ALICE M. BATCHELDER, Circuit Judge. Appellant John Turner asks us to overrule nearly four decades of circuit precedent holding that the Sixth Amendment right to counsel does not extend to preindictment plea negotiations. See *United States v. Moody*, 206 F.3d 609, 614–15 (6th Cir. 2000) (citing *United States v. Sikora*, 635 F.2d 1175 (6th Cir. 1980)). We decline to do so. Our rule—copied word for word from the Supreme Court's rule—is that the Sixth Amendment right to counsel attaches only “at or after the initiation of judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Id.* at 614 (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972) (plurality opinion)); see also *United States v. Gouveia*, 467 U.S. 180, 188 (1984). The district court followed this rule, and we AFFIRM.

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first time in Nashville this week. This year's class includes four students from Nashville School of Law, three from Lincoln Memorial University Duncan School of Law, six from the University of Tennessee College of Law, six from the University of Memphis Cecil C. Humphreys School of Law, one from Belmont University School of Law and one from Vanderbilt Law. The class will participate in a service project tomorrow, and will reconvene in June alongside the Tennessee Bar Association annual convention in Memphis.

TBA CLE

CME Approved CLE

The TBA Dispute Resolution Forum has been approved for 5.5 hours of CME credit. Speakers include Gail Ashworth of Wiseman Ashworth Law Group, Matt Sweeney of Baker, Mark Travis of Travis ADR Services, Frank Cantrell of Shuttleworth, Stephen Shields of Jackson Shields Yeiser & Holt, and the Hon. John Turnbull of Livingston. [See full list of faculty here.](#)

BPR Actions

Montgomery County Lawyer Placed on Disability Inactive Status

By Order of the Tennessee Supreme Court, the law license of [Douglas Barnett Parker](#) was transferred to disability inactive status today pursuant to Section 27.3 of Tennessee Supreme Court Rule 9. Parker cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Questions, comments: Email us at TBA Today@tnbar.org

About this publication: Today's News is a compilation of digests of news reports of interest to Tennessee lawyers compiled by TBA staff, links to digested press releases, and occasional stories about the TBA and other activities written by the TBA staff or members. Statements or opinions herein are those of the authors and do not necessarily reflect those of the Tennessee Bar Association, its officers, board or staff.

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